

BEFORE THE UTILITY DIVISION

DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
PACIFIC POWER & LIGHT COMPANY for an)
order (1) authorizing Applicant to as-)
sume liability indirectly for the pay-)
ment of up to \$215,000,000 in an)
aggregate principal amount of Interim)
Notes to be issued by Wyodak Construc-)
tion Company, Inc.; (2) authorizing)
Applicant to assume liability directly)
for the payment of up to \$215,000,000)
in an aggregate principal amount of)
Interim Notes to be issued by Wyodak)
Construction Company, Inc.; (3))
authorizing Applicant to issue Term)
Notes of not exceeding \$215,000,000)
in an aggregate principal amount to)
pay such Interim Notes upon maturity;)
and (4) authorizing, the proposed sale)
and repurchase of the Wyodak Project and)
the loaning or advancing of funds to)
Wyodak Construction Company, Inc.)

DOCKET NO. 6406

DEFAULT ORDER NO. 4252

On March 11, 1976, PACIFIC POWER & LIGHT, Applicant, filed with the Montana Public Service Commission its verified application, pursuant to Sections 70-117.1 through 70-117.6, inclusive, RCM 1947, requesting an order:

(1) authorizing Applicant to indirectly guarantee the obligations of Wyodak Construction Company, Inc., a Wyoming corporation (Construction Company) to certain Banks (Banks), under a Loan Agreement (the Loan Agreement) for which Banks Manufacturers Hanover Trust Company is acting as Agent (Agent), by entering into a Purchase Agreement (the Purchase Agreement) among Applicant, Black Hills Power and Light

Company (Black Hills) and Construction Company, which obligations include, among other things, the payment of an aggregate principal amount of up to \$215,000,000, and interest thereon represented by interim notes to be issued by Construction Company to the Banks (Interim Notes) to fund the construction of the Wyodak Steam Electric Generating Project (Wyodak Project) hereinafter defined;

(2) authorizing Applicant to directly guarantee or assume the obligations of Construction Company, including its obligations to the Banks, under certain circumstances set forth in the Loan Agreement pursuant to a Guaranty Agreement (the Guaranty Agreement) or an Assumption Agreement (the Assumption Agreement);

(3) authorizing Applicant, upon purchase of the Wyodak Project from Construction Company under the Purchase Agreement, to issue five-year term promissory notes (the Term Notes) to finance such purchase of the Wyodak Project by paying the Interim Notes issued by Construction Company in an amount not exceeding \$215,000,000 in an aggregate principal amount pursuant to the Loan Agreement;

(4) disclaiming jurisdiction with respect to the proposed sale, pursuant to the Sale Agreement (the Sale Agreement) to Construction Company and the proposed repurchase of the Wyodak Project, pursuant to the Purchase Agreement; disclaiming jurisdiction over loans or advances by Applicant to Construction Company for the purpose of permitting Construction Company to continue construction of the Wyodak Project; and

(5) to the extent jurisdiction is not disclaimed, authorizing the entire transaction contemplated by the Sale Agreement, Purchase Agreement, Loan Agreement, Guaranty Agreement, Assumption Agreement and related documents.

The application is supported by exhibits and data in accordance with the rules and regulations of the Commission governing the authorization of issuance of securities by electric and gas utility companies operating within Montana. For detailed information with respect to the general character of Applicant's business and the territories served by it, reference is made to its annual reports filed with the Commission.

The application sets forth Counsel who will pass upon the legality of its proposal to guarantee the obligations (Interim Notes) of Construction Company and to the proposed issue of Term Notes and the other regulatory authorizations required and the propriety of the proposed guarantee of such Interim Notes and the proposed issue of Term Notes.

At a regular open session of the Montana Public Service Commission, held in its office at 1227 11th Avenue, Helena, Montana, on April 23, 1976, there being present Chairman Gordon E. Bollinger and Commissioners P. J. Gilfeather, Thomas G. Monahan, James R. Shea and George Turman, there came before the Commission for final action the matters and things in Docket No. 6406, and the Commission, having fully considered the application and all the data and records per-

taining thereto on file with the Commission and being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. Applicant, Pacific Power & Light Company, is a corporation organized and existing under and by virtue of the laws of the State of Maine and is qualified to transact business in the State of Montana.

2. Applicant is operating as a public utility as defined in Section 70-103, RCM 1947, and as such is engaged in furnishing electric and water service in Montana.

3. The Commission has jurisdiction over the proposed guaranty of the Interim Notes and the issue of said Term Notes of said application under Sections 70-117.1 through 70-117.6, RCM 1947. Commission jurisdiction over the subject matter in this application also arises from the fact that it is an integrated financing transaction; "loan agreements" are considered "securities" under the usual legal definition of "security." Also, the Commission has full powers of supervision of utilities under sections 70-101 and 70-103, RCM 1947, and has "... authority to inquire into the management of the business of all public utilities..." under section 70-117, RCM 1947 (emphasis supplied).

4. Public notice of the filing of application and opportunity for the public hearing was given on March 18, 1976, in The Western News, Libby, Montana; on March 19, 1976, in The Missoulian, Missoula, Montana; and on March 19, 1976, in The Daily Interlake, Kalispell, Montana, and no protests or requests for a formal hearing were received by April 5, 1976.

5. Applicant and Black Hills are jointly constructing a coal-fired, steam-electric generating plant having an expected aggregate capacity of 330,000 kilowatts and associated equipment and facilities (excluding transmission facilities) on a site near Gillette, Wyoming (such equipment, facilities and site being referred to herein as the "Wyodak Project"), adjacent to coal reserves owned by Wyodak Resources Development Corp., a coal-mining subsidiary of Black Hills. It is presently contemplated that Applicant will be entitled to 90% of the output of the Wyodak Project and Black Hills 10% of the output upon completion with Black Hills having the right, upon certain conditions being satisfied, to increase its participation in the Wyodak Project.

To facilitate the financing of the construction of the Wyodak Project, Applicant and Black Hills intend to convey all of their right, title and interest in and to the Wyodak Project (and a Coal Supply Agreement among Applicant and Black Hills and Wyodak Resources Development Corp.) to Construction Company, a wholly owned subsidiary of BEDCO Leasing Company, Inc. (BEDCO) which is a wholly owned subsidiary of Blyth Eastman Dillon & Co. Incorporated (Blyth), a Delaware corporation engaged in the investment banking business with headquarters at 1 Chase Manhattan Plaza, New York, New York 10005. Neither Applicant nor Black Hills has any ownership interest in Blyth. The Articles of Incorporation of Construction Company will prohibit it from owning or operating an operational electric generating facility and the Purchase Agreement will require that Construction Company sell the Wyodak Project before it is operational.

Applicant and Black Hills intend that Construction Company will sell the Wyodak Project to a lessor for lease to Applicant and Black Hills. If such a lease or other satisfactory arrangement cannot be accomplished, Applicant and Black Hills will be obligated under the Purchase Agreement to repurchase the Wyodak Project from Construction Company, as more fully described below.

The Sale Agreement by which Applicant and Black Hills will convey and assign the Wyodak Project to Construction Company, substantially in the form denoted as Exhibit D-1, will require Construction Company to continue with the construction of the Wyodak Project in accordance with the specifications provided by Applicant and Black Hills. Pursuant to a Construction Agency Agreement substantially in the form of the agreement denoted as Exhibit D-2 (Construction Agency Agreement), Applicant will oversee the supervision of the construction of the Wyodak Project by Stone & Webster Engineering Corporation.

INTERIM NOTES

Construction Company will finance all of the costs of the financing and construction of the Wyodak Project (including (a) reimbursement to Applicant and Black Hills for costs incurred in connection with the Wyodak Project prior to the conveyance and assignment to Construction Company and (b) interest during construction on the Interim Notes (defined below)) through borrowings by Construction Company, advances on loans from Applicant and Black Hills, and, possibly, pollution control revenue bond financing, approval for which

would be the subject of a separate application.

Such borrowings will be made through the Loan Agreement with the Banks substantially in the form denoted as Exhibit D-3, pursuant to which the Banks will commit to lend to Construction Company up to \$215,000,000 to finance construction of the Wyodak Project. These loans will be evidenced by promissory notes (Interim Notes, as defined in the Loan Agreement) of Construction Company substantially in the form denoted as Exhibit D-4. The Interim Note issued to each Bank shall (i) be dated the date of the initial loans, (ii) be payable to the order of such Bank on the earlier of the date on which Applicant and Black Hills shall be required to pay the purchase price under the Purchase Agreement or December 15, 1978, and (iii) bear interest from the date thereof on the unpaid principal amount thereof from time to time at a rate per annum equal to 118% of the commercial loan rate of Manufacturers Hanover Trust Company from time to time in effect in New York, New York on 90-day loans to its most responsible and substantial domestic and corporate borrowers (MHTC Rate) payable quarterly, provided that any amounts not paid when due (whether at the stated maturity, by acceleration or otherwise), shall thereafter be payable at a rate per annum equal to the sum of 2% plus 118% of the MHTC Rate until such amount shall be paid in full.

Construction Company shall pay to the Agent, for the account of the Banks, a commitment fee to and including December 15, 1978, or such earlier date on which the Commitments may be terminated, computed at

the rate of 1/2 of 1% per annum on the daily average unused portion of the Commitments in effect during the period for which payment is made. Such commitment fee shall be payable quarterly and on the date on which the Commitments are terminated or the Term Notes hereinafter mentioned are issued.

Construction Company also shall pay to the Agent, for the account of the Banks, quarterly in advance, a facility fee for the period from and including the effective date of the Loan Agreement to the date on which the Commitments are terminated, computed at the rate of 1/4 of 1% per annum on the aggregate amount of the Commitments (both used and unused) in effect on the first day of the period for which payment is made. Such facility fee shall be payable (i) on the date of the initial borrowing for the period commencing on the effective date of the Loan Agreement, (ii) quarterly in advance thereafter in each year through the last of such dates next preceding the date on which the term loans are made for the next succeeding quarterly period.

Construction Company will also maintain cash compensating balances on account with each of the several Banks in an amount not less than 5% of the commitment of each such Bank and will pay the Agent a one-time agency fee of \$150,000.

As compensation for its efforts in assisting in arranging the transaction described herein, Construction Company will pay to Blyth a one-time fee in the amount of \$50,000 and \$10,000 per annum during the construction period for use of the Construction Company, plus certain expenses.

For further description of the provisions relating to the Interim Notes, and the collateral and security therefor, which may include a first security interest in and to the Wyodak Project, reference is made to the Loan Agreement.

PURCHASE OF THE WYODAK PROJECT

To induce the Banks to enter into the Loan Agreement with Construction Company, Applicant and Black Hills will have an unconditional several (but not joint) obligation under the terms of the Purchase Agreement, substantially in the form denoted as Exhibit D-5, to purchase an undivided 90% and 10% interest, respectively, in the Wyodak Project. Payment of the purchase price of the Wyodak Project by Applicant and Black Hills must be made regardless of whether Construction Company performs its obligations under the Purchase Agreement, including its obligation to sell the Wyodak Project. The right to receive such unconditional payment will be assigned to the Banks as security for the Interim Notes and Applicant and Black Hills will consent, at the Agent's request, to make such payment directly to the Agent for the account of the Banks. Applicant and Black Hills shall make such payment at the time and upon the conditions set forth in said Purchase Agreement as executed.

Applicant's and Black Hills' obligation to purchase their respective percentages of the Wyodak Project is designed to permit Construction Company to satisfy its obligations, including payment of principal and interest on the Interim Notes from cash it receives. Applicant

and Black Hills on a 90% and 10% basis, respectively, will also have the option, upon satisfaction of certain conditions under the Loan Agreement, as more fully described below, up to an aggregate principal amount of \$215,000,000.

The Loan Agreement also provides that Black Hills shall have an option to receive up to an additional 10% of the Term Loans (with Applicant's share in the Term Loans to be reduced to 80%), provided that Black Hills shall first meet certain financial tests contained in the Loan Agreement. If Black Hills meets such financial tests, it has the option under the Purchase Agreement to purchase up to 20% of the Wyodak Project (with Applicant's share being correspondingly reduced). The Purchase Agreement also permits Black Hills to increase its share of the Wyodak Project up to 40% on the date of purchase from Construction Company by payment to Applicant of the cost of such increased share.

The Loan Agreement permits Applicant to assume the obligations of Construction Company to the Banks pursuant to an Assumption Agreement, substantially in the form denoted as Exhibit D-6. This provision is to enable Applicant to assume the obligations of Construction Company if Construction Company is in default or Applicant deems it about to be in default under the terms of the Loan Agreement. The Loan Agreement also provides that Applicant may guarantee the obligations of Construction Company pursuant to a Guaranty Agreement, substantially in the form denoted as Exhibit D-7, in order to pre-

vent the Interim Notes becoming accelerated on account of a default by Black Hills under the Loan Agreement or related documents. The Purchase Agreement provides that if Applicant pays the entire amount of the obligations of Construction Company pursuant to the Assumption Agreement or Guaranty Agreement, Black Hills must promptly reimburse Applicant in full for its share of such obligations. If Black Hills fails to do so, Applicant's percentage share of the Wyodak Project will increase to 100% and Black Hills will have no further interest in the Wyodak Project.

Although, as pointed out above, Applicant and Black Hills will together have an unconditional obligation to purchase the entire Wyodak Project, they will not be called upon to purchase the Wyodak Project if, prior to the times set forth above, other arrangements can be made for the Wyodak Project to be purchased from Construction Company for the use of Applicant and Black Hills under a lease or other similar arrangement.

INDIRECT GUARANTY OF INTERIM NOTES

Through the unconditional and noncancellable obligation to purchase the Wyodak Project or cause it to be purchased under the Purchase Agreement, Applicant and Black Hills will indirectly guarantee the obligations of Construction Company evidenced by such Interim Notes to the Banks in their several respective percentage shares (Applicant, 90%; Black Hills, 10%). The indirect guaranty is to be absolute and unconditional and it will apply notwithstanding any de-

fault on the part of Construction Company or any compromise, settlement, modification, amendment, release or termination of any or all of the obligations, covenants or agreements of Construction Company.

For a further statement of the provisions of the indirect guaranty of the obligations of Construction Company represented by such Interim Notes, reference is made to the Purchase Agreement and the Loan Agreement.

It is intended that Applicant will account for the obligations which it has indirectly guaranteed as long-term debt and the Wyodak Project as construction work in progress separately classified to disclose the existence of the fact that Construction Company owns the Project, subject to an obligation to convey it to Applicant and Black Hills prior to its being placed in service.

TERM NOTES

If Applicant and Black Hills are unable to cause a third party to purchase the Wyodak Project from Construction Company for use by Applicant and Black Hills, by lease or otherwise, Applicant and Black Hills will repurchase the Wyodak Project according to their respective interests and the Banks participating in the Loan Agreement have agreed to make aggregate Term Loans of up to \$215,000,000 severally to Applicant and Black Hills and to substitute Term Notes for the obligations of Construction Company evidenced by the Interim Notes. The Term Loans shall be made on the date on which Applicant

and Black Hills purchase the Wyodak Project from Construction Company, but in no event later than December 15, 1978.

The Term Loans shall be in an aggregate amount of not to exceed \$215,000,000, shall be made pro rata by the Banks according to their Commitments under the Loan Agreement and shall be evidenced by Term Notes substantially in the form of Exhibit D-8, with appropriate insertions therein as to maker, payee, principal amount and dates. Applicant's obligations to the Banks under the Term Notes will be unsecured. Each Term Note shall (i) be appropriately executed and delivered, (ii) be payable to the order of the Bank making the term loan evidenced thereby, (iii) be dated the date the term loans are made, (iv) be stated to mature in ten (10) consecutive semiannual installments, each as nearly equal as may be, and (v) bear interest from the date thereof on the unpaid principal amount thereof at a rate per annum equal to 125% of the MHTC Rate, provided that any amounts not paid when due (whether at the stated maturity, by acceleration or otherwise) shall thereafter be payable at a rate per annum equal to the sum of 2% plus 125% of the MHTC Rate until such amount shall be paid in full. Interest on each Term Note shall be payable quarterly during the term thereof and upon payment in full of the unpaid principal amount thereof.

Either Applicant or Black Hills may, at its option, at any time or from time to time prepay its Term Notes in whole or in part, upon at least five business days' prior written notice to the Agent spec-

ifying the date and the amount of prepayment and upon the payment of accrued interest on the amount prepaid to and including the date of prepayment. Partial prepayments to be applied on the Term Notes shall be applied on account of installments of principal of the Term Notes in the inverse order of their normal maturity. Amounts prepaid on account of the Term Notes may not be reborrowed.

If Black Hills has defaulted under the Loan Agreement or failed to satisfy its term and conditions, and as a result thereof, the Banks would not be required to make the Term Loans to Black Hills. Applicant may obtain all the Term Loans up to the Banks' maximum commitment of \$215,000,000 and if Black Hills fails to reimburse Applicant for its percentage share of the Project purchase price on the purchase date, Applicant's percentage share of the Wyodak Project shall increase to 100% and Black Hills will have no further interest in the Wyodak Project.

For a further statement of provisions relating to said Term Notes, reference is made to the Loan Agreement. Copies of all agreements referred to above accompany the application.

ASSUMPTION AND GUARANTY AGREEMENTS

As set forth above, Applicant may assume or guarantee the obligations of Construction Company, including its obligations to the Banks, and such assumption or guarantee by Applicant may be deemed to be either the issuance by Applicant of a security or the guaranteeing of a security issued by another.

CONCLUSIONS OF LAW

1. The securities transactions proposed by Applicant, as hereinafter authorized, will be for a lawful purpose and are consistent with the public interest; the same are appropriate and consistent with the proper performance by Applicant of service as a public utility; and the aggregate amount of securities outstanding and proposed to be outstanding will not exceed the fair value of the properties and business of Applicant. The proceeds from these transactions are not chargeable, in whole or in part, to operating expenses or to income.

ORDER

IT IS ORDERED by the Commission:

1. The application of Pacific Power & Light Company for authority to indirectly guarantee the obligations of Wyodak Construction Company, Inc., a Wyoming corporation, (Construction Company) to certain Banks (Banks), under a Loan Agreement (the Loan Agreement) for which Banks Manufacturers Hanover Trust Company is acting as Agent (Agent), by entering into a Purchase Agreement (the Purchase Agreement) among Applicant, Black Hills Power and Light Company (Black Hills) and Construction Company, which obligations include, among other things, the payment of an aggregate principal amount of up to \$215,000,000, and interest thereon represented by interim notes to be issued by Construction Company to the Banks (Interim Notes) to

fund the construction of the Wyodak Steam Electric Generating Project (Wyodak Project) is granted.

2. The application of Pacific Power & Light Company for authority to directly guarantee or assume the obligations of Construction Company, including its obligations to the Banks, under certain circumstances set forth in the Loan Agreement pursuant to a Guaranty Agreement (the Guaranty Agreement) or an Assumption Agreement (the Assumption Agreement) is granted.

3. The application of Pacific Power & Light Company for authority to purchase the Wyodak Project from Construction Company under the Purchase Agreement, to issue five-year term promissory notes (the Term Notes) to finance such purchase of the Wyodak Project by paying the Interim Notes issued by Construction Company in an amount not exceeding \$215,000,000 in an aggregate principal amount pursuant to the Loan Agreement is granted.

4. The proposed sale of the Wyodak Project pursuant to the Sale Agreement, the proposed repurchase of the Wyodak Project pursuant to the Purchase Agreement, the proposed loans or advances and all transactions contemplated by said agreements and related documents are granted.

5. Pacific Power & Light Company shall file with the Commission, from time to time, copies of all such reports as are required to be filed by Applicant with the Federal Power Commission (FPC) under applicable rules and regulations of the FPC, as now in effect

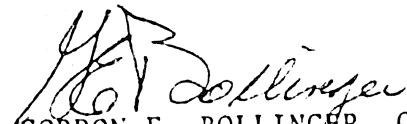
or hereafter amended, relating to the indirect guaranty of said Interim Notes and the issue of said Term Notes and shall file true copies of the Sale Agreement, Construction Agency Agreement, Loan Agreement, Interim Notes, Purchase Agreement, Assumption Agreement, Guaranty Agreement and Term Notes within sixty days of the execution of each such statement, when and if executed. The filing shall be with the secretary of the utility division to be placed in the file.

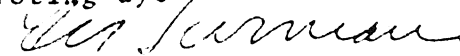
NOTE: Section 70-117.6, RCM 1947, provides that neither the issuance of securities by Applicant pursuant to the provision of this order, nor any other act or deed done or performed in connection therewith, shall be construed to obligate the State of Montana to pay or guarantee in any manner whatsoever any security authorized, issued, assumed or guaranteed hereunder.


The approval of transactions herein authorized shall not be construed as precedent to prejudice any future action of this Commission.

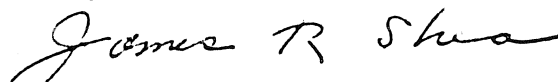
Issuance of this order does not mean acceptance of the Applicant's exhibits or other material accompanying the application for any purpose other than the issuance of this order.


DONE IN OPEN SESSION at a meeting of the PUBLIC SERVICE COMMISSION
held April 23, 1976.


GORDON E. BOLLINGER, Chairman
Voting aye

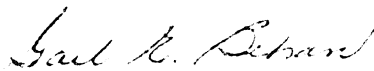

GEORGE TURMAN, Commissioner
Voting aye


THOMAS G. MONAHAN, Commissioner
Voting aye


JAMES R. SHEA, Commissioner
Voting to dissent


P. J. GILFEATHER, Commissioner
Voting to dissent

ATTEST:


GAIL E. BEHAN
Secretary

(SEAL

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing within thirty (30) days from the service of this Order, a petition for review pursuant to Section 82-4216, RCM 1947.